

2024 -- S 2746

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

Introduced By: Senators Euer, DiMario, Gu, DiPalma, Sosnowski, and Valverde

Date Introduced: March 08, 2024

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 46-23 of the General Laws entitled "Coastal Resources Management
2 Council" is hereby amended by adding thereto the following sections:

3 **46-23-16.1. Cable siting.**

4 (a) Any lease of tidal lands of twenty-five (25) acres or more, or any license to use those
5 lands, is subject to approval, disapproval, or conditional approval by the direct enactment of the
6 general assembly by legislative action. The coastal resources management council (CRMC) shall
7 review all requests for leases, licenses to use the land, and other authority to use the land made by
8 any applicant prior to presentation of the request to the general assembly, and the CRMC shall
9 make recommendations on the request to the general assembly.

10 (b) Consistent with the public trust and the public's right to use and enjoyment of any
11 proposed cable corridor, when reviewing requests for use of tidal lands for cables the CRMC shall:

12 (1) Apply parallel routing with existing linear infrastructure;

13 (2) Avoid sensitive resources to the maximum extent practicable, including, but not limited
14 to, hard bottom habitat, cold water corals, submerged aquatic vegetation, emergent aquatic
15 vegetation/marshlands, areas prone to coastal erosion, electromagnetic fields (EMF)-sensitive
16 species aggregation areas and migration routes, clam beds, historic areas, threatened and
17 endangered species habitat, and areas of potentially significant archeological resources;

18 (3) Limit the footprint of combined linear infrastructure to minimize resource

1 fragmentation in zones without space limitations;

2 (4) Bundle cables to minimize number of routes;

3 (5) Limit crossings of other infrastructure and cross at right angles;

4 (6) Avoid anchorage areas and navigation channels;

5 (7) Minimize in-water transmission cable length to the extent that other environmental and
6 anthropogenic resources and use are not impacted disproportionately;

7 (8) Where possible, installation at landfall should be one horizontal directional drill (HDD)
8 per bundled high voltage direct current cable;

9 (9) Where possible, use public rights-of-way, transmission corridors, railroad corridors,
10 and/or local, county, and/or state roads or highways that meet the permitting requirements and
11 FHWA approval where applicable;

12 (10) Minimize crossings of active infrastructure and when crossings are necessary, use
13 specialized crossing methods, including trenchless methods like HDD and jack-and-bore, at bridge
14 crossings over water, other roadways, or railroads; existing utility crossings; and intersections with
15 major arterial roadways;

16 (11) Avoid impacts to the commercial fishing industry as a result of submerged energy
17 cable installation and operation within state waters.

18 (12) Avoid impacts to residential neighborhoods, environmental justice areas,
19 disadvantaged communities, and underserved communities;

20 (13) Avoid sensitive resources to maximum extent practicable, including, but not limited
21 to, areas of particular concern, state and federally-regulated wetlands, federally- or state-listed
22 endangered or threatened species, or associated habitat, designated critical habitat, conservation
23 and mitigation sites, and areas of potentially significant archeological resources.

24 (14) Establish standards, based upon best scientific evidence, for appropriate cable
25 requirements including subsections (b)(1) through (b)(13) of this section; size, burial methods and
26 depth, trenching methods, seasonal limitations on trenching, and appropriate requirements to avoid
27 and minimize EMF effects. The council shall strictly scrutinize each request for use of a secondary
28 cable protection method and may approve or disapprove of a request after a public hearing.
29 Approval may be granted only when necessary and, when granted, the council shall place strict
30 limitations and requirements on each use or location of a secondary cable protection method which
31 may include increased monitoring and inspection of those locations.

32 (c) The CRMC shall require regular cable inspections by the applicant for the submerged
33 cable annually; however, every area with a secondary cable protection method shall be inspected
34 at least two (2) times each year. The inspection report shall be provided to the CRMC and general

1 assembly within thirty (30) days of completion of each inspection.

2 (d) The CRMC shall require that the applicant or its successor shall monitor EMF levels
3 along the cable route for multiple successive days each season of the year in order to get the most
4 accurate EMF measurements.

5 (e) The CRMC shall require a fisheries monitoring plan prior to cable installation and for
6 the life of the cables. The fisheries monitoring plan shall be incorporated within the lease of tidal
7 lands as required by § 46-23-16.2.

8 (f) The CRMC shall promulgate rules and regulations as necessary to implement this
9 section.

10 **46-23-16.2. Fee for lease of tidal lands.**

11 (a) There shall be a per annum fee assessed for submerged cables which shall be determined
12 by a cost of twenty-five dollars (\$25.00) per linear foot of the submerged cable, annualized over
13 the course of the twenty (20) year life span of the submerged cable and adjusted annually for
14 inflation as determined by the consumer price index but in no circumstance less than the linear
15 price set forth at the commencement of the lease with additional costs that may be considered and
16 included in the per annum fee, if areas of particular concern are disturbed.

17 (b) In light of the unique size, scope, and overall potential impact upon the environment of
18 large scale projects involving twenty-five (25) acres or more, any fee assessed for the lease of tidal
19 lands, or any license to use those lands, is subject to approval, disapproval, or conditional approval
20 by the direct enactment of the general assembly by legislative action.

21 (c) All leases for submerged cables shall be recorded in the land evidence records of any
22 and all municipalities where the submerged cable makes land fall. Recording fees shall be satisfied
23 by the owner of the submerged cable.

24 SECTION 2. Section 46-23-1 of the General Laws in Chapter 46-23 entitled "Coastal
25 Resources Management Council" is hereby amended to read as follows:

26 **46-23-1. Legislative findings.**

27 (a)(1) Under article 1, § 17 of the Rhode Island Constitution, the people shall continue to
28 enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they
29 have been heretofore entitled under the charter and usages of this state, including, but not limited
30 to, fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and
31 passage along the shore; and they shall be secure in their rights to use and enjoyment of the natural
32 resources of the state with due regard for the preservation of their values; and it is the duty of the
33 general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and
34 other natural resources of the state, and to adopt all means necessary and proper by law to protect

1 the natural environment of the people of the state by providing adequate resource planning for the
2 control and regulation of the use of the natural resources of the state and for the preservation,
3 regeneration, and restoration of the natural environment of the state.

4 (2) The general assembly recognizes and declares that the coastal resources of Rhode
5 Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of
6 immediate and potential value to the present and future development of this state; that unplanned
7 or poorly planned development of this basic natural environment has already damaged or destroyed,
8 or has the potential of damaging or destroying, the state's coastal resources, and has restricted the
9 most efficient and beneficial utilization of these resources; that it shall be the policy of this state to
10 preserve, protect, develop, and, where possible, restore the coastal resources of the state for this
11 and succeeding generations through comprehensive and coordinated long range planning and
12 management designed to produce the maximum benefit for society from these coastal resources;
13 and that preservation and restoration of ecological systems shall be the primary guiding principle
14 upon which environmental alteration of coastal resources will be measured, judged, and regulated.

15 (b)(1) That effective implementation of these policies is essential to the social and
16 economic well-being of the people of Rhode Island because the sea and its adjacent lands are major
17 sources of food and public recreation, because these resources are used by and for industry,
18 transportation, waste disposal, and other purposes, and because the demands made on these
19 resources are increasing in number, magnitude, and complexity; and that these policies are
20 necessary to protect the public health, safety, and general welfare. Pursuant to 16 U.S.C. § 1452
21 ("The Coastal Zone Management Act"), the general assembly hereby directs the council (referred
22 to as "CRMC") to exercise effectively its responsibilities in the coastal zone through the
23 development and implementation of management programs to achieve wise use of the land and
24 water resources of the coastal zone.

25 (2) Furthermore, that implementation of these policies is necessary in order to secure the
26 rights of the people of Rhode Island to the use and enjoyment of the natural resources of the state
27 with due regard for the preservation of their values, and in order to allow the general assembly to
28 fulfill its duty to provide for the conservation of the air, land, water, plant, animal, mineral, and
29 other natural resources of the state, and to adopt all means necessary and proper by law to protect
30 the natural environment of the people of the state by providing adequate resource planning for the
31 control and regulation of the use of the natural resources of the state and for the preservation,
32 regeneration, and restoration of the natural environment of the state.

33 (c) That these policies can best be achieved through the creation of a coastal resources
34 management council as the principal mechanism for management of the state's coastal resources.

1 (d) The general assembly recognizes and declares that maintenance dredging is required to
2 remove natural silt accumulations; Rhode Island has not had a general maintenance dredging policy
3 and programs for ports, port facilities, channels, harbors, public and private marinas and boating
4 facilities, recreational facilities and habitat areas; other major coastal states have maintenance
5 dredging policies and in-water maintenance dredge disposal sites; as a result of the lack of a general
6 maintenance dredging policy and program and as a result there has been:

7 (1) A decrease in the depth of the Providence Channel from forty-four (44) feet in 1971 to
8 twenty-four (24) feet in 1996;

9 (2) Navigational restrictions on ocean going vessels through the state's waterways and
10 channels; and

11 (3) A decrease in the number of available slips and moorings at marinas throughout the
12 state; and the lack of a maintenance dredging policy and programs have significant adverse
13 environmental and economic effects on the state and therefore it is in the best interest of the state,
14 the cities and towns of the state, and the citizens thereof for the state to have a general maintenance
15 dredging policy and programs to resolve issues related to dredge maintenance and disposal and
16 avoid future significant direct and indirect adverse impact on the environment and economy of the
17 state.

18 (e) The coastal resources management council is hereby designated as the lead state agency
19 for purposes of dredging in tidal waters and as such shall have the following duties and
20 responsibilities:

21 (1) To coordinate the interest of the state with regard to dredging;

22 (2) To formulate and adopt a state policy with regard to dredging which integrates those
23 interests;

24 (3) To cooperate with, negotiate, and to enter into agreements on behalf of the state with
25 the federal government and with other public bodies and private parties with regard to dredging;

26 (4) To act as the initial and primary point of contact for all applications to the state for
27 dredging projects in tidal waters;

28 (5) To develop, prepare, adopt pursuant to § 46-23-11, implement, and maintain a
29 comprehensive plan for dredge material management; and

30 (6) To cooperate and coordinate with the departments of environmental management,
31 transportation, administration, and health, and the economic development corporation in the
32 conduct of these duties and responsibilities.

33 (f)(1) The legislature recognizes that under Article I, § 17, the submerged lands of the state
34 are impressed with a public trust and that the state is responsible for the protection of the public's

1 interest in these lands. The state maintains title in fee to all soil within its boundaries that lies below
2 the high water mark, and it holds that land in trust for the use of the public. In benefiting the public,
3 the state preserves certain public rights which include, but are not limited to, fishery, commerce,
4 and navigation in these waters and the submerged lands that they cover.

5 (2) Since its establishment in 1971, the CRMC has had the authority to manage and plan
6 for the preservation of the coastal resources of the state including, but not limited to, submerged
7 lands. The legislature hereby declares that, in light of the unique size, scope, and overall potential
8 impact upon the environment of large scale ~~filling~~ projects involving twenty-five (25) acres or
9 more, any lease of tidal lands, or any license to use those lands, is subject to approval, disapproval,
10 or conditional approval by the direct enactment of the general assembly by legislative action. The
11 CRMC shall review all requests for leases, licenses to use the land, and other authority to use the
12 land made by any applicant prior to presentation of the request to the general assembly, and the
13 CRMC shall make recommendations on the request to the general assembly. With the exception of
14 any and all projects ~~to fill land~~ of twenty-five (25) acres or more, the general assembly hereby
15 recognizes and declares that the CRMC is delegated the sole and exclusive authority for the leasing
16 of submerged and filled lands and giving licenses for the use of that land. Accordingly, the CRMC
17 will develop, coordinate, and adopt a system for the leasing of submerged and filled lands, and
18 licenses for the use of that land, and will ensure that all leases and licenses are consistent with the
19 public trust. Pursuant thereto, the CRMC shall impose a maximum fee of eighty thousand dollars
20 (\$80,000) per annum for any transatlantic cable that makes landfall in Rhode Island. All such fees
21 collected shall be deposited into the Bays, Rivers and Watersheds Fund, established pursuant to §
22 46-31-12.1, and shall be disbursed according to the purposes of that fund. Nothing contained in this
23 subsection negates, repeals, or alters the provisions, processes, and requirements for the leasing of
24 submerged land for the conduct of aquaculture as set out under chapter 10 of title 20. Therefore,
25 nothing in this chapter shall be construed to limit or impair the authority of the state, or any duly
26 established agency of the state, to regulate filling or dredging affecting tidal lands owned by the
27 state or any other entity, and nothing in this chapter shall be construed to limit or impair the
28 obligation of the applicant to obtain all applicable regulatory approvals. Specifically, and without
29 limiting the foregoing, nothing in this subsection negates, repeals, or alters the provisions,
30 processes, and requirements for water quality certification contained in chapter 12 of this title.

31 (3) Definitions.

32 (i) "Filled land" means portions of tidal lands which have been rendered by the acts of man
33 to be no longer subject to tidal action or beneath tidal waters.

34 (ii) "Tidal Lands" means those lands that are below the mean high water.

1 (iii) "Mean high water" means a line of contour representing the 18.6 year average as
2 determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum, and
3 methodology of the United States Coastal Geodetic Survey within the National Oceanic and
4 Atmospheric Administration.

5 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT
COUNCIL

1 This act would require that any lease of tidal lands, or any license issued to use those lands,
2 be approved by the general assembly, including the use of tidal lands for cables or pipelines. This
3 act would further require that the coastal resources management council review all requests for
4 leases, licenses to use the land, and other authority to use the land, prior to presentation to the
5 general assembly and to make recommendations on any request being presented to the general
6 assembly.

7 This act would take effect upon passage.

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